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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/228,109	01/11/1999	MARTIN BRADY	0166	7301

7590

02/04/2003

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EXAMINER

SHOAP, ALLAN N

ART UNIT

PAPER NUMBER

3724

DATE MAILED: 02/04/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/228,109

Applicant(s)

BRADY, MARTIN

Examiner

Allan N. Shoap

Art Unit

3724

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on 01/03/03.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 3-5 and 7-13 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 4,5,8,9,14 and 15 is/are allowed.
- 6) ☒ Claim(s) 3,7 and 10-13 is/are rejected.
- 7) ☒ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_ 6) ☐ Other: \_\_\_\_\_

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1. Certain claims previously allowed were inadvertently omitted from the prior Office action. Therefore, this action is non-final to include those claims. The oversight is regretted.

#### DETAILED ACTION

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 3, 7, 10-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over the PRESTO CAN OPENER PLUS (previously cited and, hereafter, to be called Presto) in view of Davies (4,152,831) and Nielsen et al (5,791,608). Presto teaches an electric can opener having substantially everything claimed - including a jar opener mounted on the bottom wall of the can opener. See page 8 of the instructions in Presto for the jar opener. Presto does not teach a scissors releasably retained to the can opener such as by a sheath. However, Davies teaches that a scissors-like tool, which one of ordinary skill in the art can call a scissors, may be attached to any surface where it is convenient via a sheath in which the sheath allows access to the scissors. See col. 2, lines 26 – 30, and see col. 3, lines 30 –31 in Davies. Nielsen et al teaches that a scissors may be secured via a sheath to a home appliance such as a machine in the form of a sewing machine, a refrigerator, or a washer or a dryer. See col. 2, lines 26 –

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34 in Nielsen et al. The Presto can opener presents convenient surfaces such as its sides and top and back and is clearly a home appliance that can be defined as a machine. Therefore, to provide a scissors removably retained to the can opener in Presto via a sheath is suggestive from Davies since the can opener presents available, convenient surfaces. This is further made obvious by Nielsen et al for teaching that it would have been obvious to provide a sheathed scissors on any convenient surface where it may be desired for use and wherein that surface is a machine in the form of a home appliance. Thus, clearly, the collective teachings of Davies and Nielsen et al teach that it would have been obvious to provide a scissors, and a sheath for the scissors, on any available surface of an appliance where such scissors and sheath might be deemed useful or is considered a desirable location for the use of the scissors and sheath. Since the Presto can opener is an appliance with available space, it would have been obvious to place a scissors and sheath on the can opener if one so desired. To place the sheath on the back of the housing of the can opener as set forth in claims 3 and 7 would have been an obvious matter of choice of said available, convenient space as desired. Moreover, "back" can include several surfaces of the can opener. Further regarding claims 3 and 7, it is noted that the applied sheath of Davies includes various holders such as at 20, 21, 22, 23 or 36 or 37,38. And any of these holders would have been obvious in the combination to make the scissors readily removable but secure in its sheath.

***Allowable Subject Matter***

4. Claims 4, 5, 8, 9, 14, and 15 are allowed.

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### Response to Arguments

5. Applicant's arguments filed 1/03/03 have been fully considered but they are not persuasive. Applicant is relying on the Board decision to rationalize the rejection is improper. The Board did not have the prior art and specific combination before it as now set forth by the examiner. In view of this, that decision is moot over the present rejections. While applicant may again decide to appeal, it is submitted that in view of the newly applied prior art in combination, a different decision would be rendered based on the claims as presently rejected. In particular, and as stated in the rejection above, Davies and Nielsen et al are quite suggestive of placing a scissors in a sheath (with holder) and securing it to any available wall surface of a machine or apparatus where it is thought that sheath and scissors would be needed. It is submitted that would be *any* machine or apparatus. The claims rejected do not provide any distinguishing limitations over such suggestion and prior art structure. Presto is more provided as illustration of a machine as claimed and that it has surfaces available for a sheath and tool if available space was needed to provide for a location of opportunity for supporting and accessing a tool such as a scissors.

### **Conclusion**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Allan Shoap whose telephone number is 703-308-1082.

In lieu of mailing, it is encouraged that all formal responses be faxed to 703-305-3579. Any inquiry of a general nature or relating to the status of this application should be directed to the receptionist whose telephone number is 703-308-1148.

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ALLAN N. SHOAP  
SUPERVISORY PATENT EXAMINER  
ART UNIT 3727  
703-308-1082

February 3, 2003